

111TH CONGRESS
1ST SESSION

H. R. 1846

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and preempt certain State laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2009

Mr. BACA (for himself and Mrs. SCHMIDT) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to establish additional payday loan disclosure requirements and preempt certain State laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Lending
5 Education And Reform Act” and the “C.L.E.A.R. Act”.

6 **SEC. 2. PROTECTIONS FOR CONSUMERS.**

7 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
8 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
9 after section 129A the following new section:

1 **“§ 129B Protections for consumers**

2 “(a) DEFINITIONS.—For purposes of this section, the
3 following definitions shall apply:

4 “(1) AFFILIATE.—The term ‘affiliate’ has the
5 same meaning as in section 129(k).

6 “(2) ELECTRONIC SIGNATURE.—The term ‘elec-
7 tronic signature’ means a signatures in digital or
8 other electronic form that meets the validity require-
9 ments of the Electronic Signatures in Global and
10 National Commerce Act.

11 “(3) EXTENDED PAYMENT PLAN.—The term
12 ‘extended payment plan’ means an amendment to
13 the payday loan that is signed in person or electroni-
14 cally by both the consumer and the creditor reflect-
15 ing an agreement that the consumer pay the out-
16 standing balance on a payday loan in 4 equal pay-
17 ments, where the period between each payment may
18 not be less than the duration of the original payday
19 loan.

20 “(4) HOME STATE.—

21 “(A) IN GENERAL.—The term ‘home
22 State’ means, with respect to any creditor or
23 any affiliate of a creditor, the State in which
24 the primary home office of the creditor or any
25 affiliate of the creditor is located.

1 “(B) HOME OFFICE.—The term ‘home of-
2 fice’ means the office that houses a majority of
3 the applicable party’s day-to-day management
4 and administrative support functions.

5 “(5) INTEREST AND FEES.—

6 “(A) IN GENERAL.—Except as provided in
7 subparagraph (B), the term ‘interest and fees’
8 includes any charge payable directly or indi-
9 rectly by the consumer and imposed directly or
10 indirectly by the creditor as an incident to or a
11 condition of the extension of credit.

12 “(B) CHARGES NOT INCLUDED.—The term
13 ‘interest and fees’ does not include—

14 “(i) any charge for a default, delin-
15 quency, or similar occurrence; or

16 “(ii) any charge imposed when, if for
17 any reason, funds are not made available
18 to pay an item or authorization delivered
19 to the creditor in the manner described in
20 subparagraph (A) or (B) of paragraph (1)
21 to the extent that—

22 “(I) the charge does not exceed
23 the greater of \$25 or the amount
24 charged to the creditor by the credi-
25 tor’s financial institution; and

1 “(II) the charge is only imposed
2 once per each item or authorization
3 regardless of whether the item or au-
4 thorization is presented for payment
5 more than once.

6 “(6) LOAN STORE.—The term ‘loan store’
7 means each location operated by a creditor at which
8 applications for payday loans are received or the
9 proceeds of payday loans are disbursed.

10 “(7) PAYDAY LOAN; LOAN.—The terms ‘payday
11 loan’ and ‘loan’ mean a closed-end credit trans-
12 action, evidenced by a loan agreement signed by the
13 creditor and the consumer, in person or electroni-
14 cally, unsecured by any interest in the consumer’s
15 tangible personal property with a term of at least 7
16 and not more than 90 days in which the amount fi-
17 nanced does not exceed \$2,000 with a finance charge
18 exceeding an annual percentage rate of 36 percent,
19 and the consumer—

20 “(A) receives funds from and incurs inter-
21 est or a fee payable to a creditor, and contem-
22 poraneously with the receipt of funds, provides
23 a check or other payment instrument to the
24 creditor who agrees with the consumer not to

1 deposit or present the check or payment instru-
2 ment for more than 1 day; or

3 “(B) receives funds from and incurs inter-
4 est or a fee payable to a creditor, and contem-
5 poraneously with the receipt of funds, author-
6 ized the creditor to initiate a debt or debits to
7 the consumer’s deposit account (by electronic
8 fund transfer or remotely created check) after
9 1 or more days.

10 “(8) PAYDAY LENDER.—The term ‘payday
11 lender’ means any creditor with respect to a payday
12 loan.

13 “(9) REFINANCING.—The term ‘refinancing’
14 means the use of the proceeds of 1 payday loan ob-
15 tained from a creditor to pay off any amount due to
16 that creditor.

17 “(b) PROTECTIONS FOR CONSUMERS.—

18 “(1) INTEREST AND FEE CAP.—A payday lend-
19 er may not—

20 “(A) require a consumer to pay—

21 “(i) in the case of any original payday
22 loan, interest and other fees and charges
23 that total more than 15 cents for every
24 dollar loaned; and

1 “(ii) in the case of an original payday
2 loan originated over the Internet, an addi-
3 tional origination fee in excess of 5 percent
4 of the original principal loan amount;

5 “(B) require a consumer to pay interest
6 and fees that, combined, total more than—

7 “(i) in the case of the 1st refinancing
8 of an outstanding payday loan, 15 cents
9 for every dollar of the outstanding original
10 principal loan amount; and

11 “(ii) in the case of the 2nd refi-
12 nancing of an outstanding payday loan, 10
13 cents for every dollar of the outstanding
14 original principal loan amount; or

15 “(C) require a consumer to pay an origina-
16 tion fee for a payday loan that is refinanced.

17 “(2) MANDATORY DISCLOSURES.—A payday
18 lender may not make or refinance a payday loan un-
19 less the creditor has first provided the consumer
20 with a copy of a written loan agreement, which shall
21 be signed by the creditor and by the consumer and
22 shall include the following information in English
23 and in the language in which the loan was nego-
24 tiated:

1 “(A) A clear and conspicuous description
2 of the terms of the loan, including the total cost
3 of all fees and other charges in connection with
4 the loan stated as a dollar amount, and the con-
5 sumer’s payment obligations under the loan.

6 “(B) The name, address and telephone
7 number of the creditor making the loan, and
8 the name of title of the individual employee of
9 the creditor who signs the loan agreement on
10 behalf of the creditor.

11 “(C) The following statements, in at least
12 14-point bold face type:

13 “(i) WARNING.—This loan is not in-
14 tended to meet long-term financial needs.
15 This loan should be used only to meet
16 short-term cash needs.

17 “(ii) CREDIT COUNSELING AVAIL-
18 ABILITY.—You should consider contacting
19 an independent, nonprofit credit counseling
20 agency approved by the National Founda-
21 tion for Credit Counseling (NFCC) or by a
22 State or Federal Government agency. You
23 may obtain information on how to contact
24 an approved counselor near you by calling

1 the National Foundation for Credit Coun-
2 seling at 1-800-388-2227.

3 “(iii) NO CRIMINAL PROSECUTION OR
4 SECURITY INTEREST.—You cannot be
5 prosecuted in criminal court to collect this
6 loan, and the creditor may not take or at-
7 tempt to take an interest in any of your
8 personal property to secure his loan.

9 “(3) ADDITIONAL PUBLIC DISCLOSURES.—A
10 payday lender may not make or refinance a payday
11 loan to any consumer unless the following notices
12 are posted conspicuously in English and Spanish
13 and in not less than 1-inch bold print in the credi-
14 tor’s public lending area in each loan store, or, if the
15 loan is made using the Internet, fax or other means,
16 are posted conspicuously on the creditor’s public
17 internet site relating to any such payday loan:

18 “(A) WARNING.—This loan is not intended
19 to meet long-term financial needs. This loan
20 should be used only to meet short-term cash
21 needs.

22 “(B) CREDIT COUNSELING AVAIL-
23 ABILITY.—You should consider contacting an
24 independent, nonprofit credit counseling agency
25 approved by the National Foundation for Credit

1 Counseling (NFCC) or by a State or Federal
2 Government agency. You may obtain informa-
3 tion on how to contact an approved counselor
4 near you by calling the National Foundation for
5 Credit Counseling at 1-800-388-2227.

6 “(C) NO CRIMINAL PROSECUTION OR SE-
7 CURITY INTEREST.—You cannot be prosecuted
8 in criminal court to collect this loan, and the
9 creditor may not take or attempt to take an in-
10 terest in any of your personal property to se-
11 cure his loan.

12 “(4) CREDITOR SURETY BOND REQUIRE-
13 MENTS.—

14 “(A) IN GENERAL.—A payday lender may
15 not make or refinance a payday loan unless the
16 creditor has obtained and filed, in accordance
17 with subparagraph (B), a surety bond in the
18 following amount:

19 “(i) A surety bond in the amount of
20 \$100,000 for each loan store operated by
21 the creditor, if the creditor operates fewer
22 than 10 loan stores and does not offer any
23 payday loans over the Internet.

24 “(ii) A surety bond in the amount of
25 \$1,000,000, if the creditor operates 10 or

1 more loan stores or offers loans over the
2 Internet.

3 “(iii) Such greater amount as may be
4 required by applicable State law.

5 “(B) BOND REQUIREMENTS.—The surety
6 bond obtained by a payday lender to meet the
7 requirements of subparagraph (A) shall be filed
8 with, and for the benefit of, the State attorney
9 general in the creditor’s home state.

10 “(C) AGGREGATION OF LENDER AND AF-
11 FILIATE UNDER CERTAIN CIRCUMSTANCES.—
12 For purposes of this paragraph, a creditor and
13 each affiliate of a creditor which has the same
14 home State as the creditor may aggregate the
15 loan stores operated by such creditor and any
16 such affiliate for purposes of determining the
17 amount of the surety bond required to be filed
18 under subparagraph (A).

19 “(5) EXTENDED PAYMENT PLAN.—

20 “(A) IN GENERAL.—A payday lender may
21 not make or refinance a payday loan unless the
22 terms of the loan require the creditor, upon re-
23 ceiving notice from the consumer of an inability
24 to repay prior to close of business on the last
25 business day before the original due date of the

1 loan, provides the consumer with notice of and
2 the right to opt into an extended payment plan,
3 without charge, 1 time in any 12 month period.

4 “(B) LIMITATION DURING EXTENDED PAY-
5 MENT PLAN.—A creditor may not engage in
6 any collection activity (or procure the services
7 of any other for such purpose) during the term
8 of any extended payment plan.

9 “(6) REFINANCING.—A payday lender may
10 not—

11 “(A) refinance a payday loan for less than
12 7 days;

13 “(B) refinance a payday loan more than 2
14 consecutive times; refinance a payday loan with-
15 out terminating the previous agreement and en-
16 tering into a new agreement that the creditor
17 and consumer each sign in person or with an
18 electronic signature; or

19 “(C) require a consumer to pay interest
20 and fees in connection with a refinancing that,
21 combined, total more than the amount per-
22 mitted under paragraph (1)(B).”.

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) DISCLOSURES.—Section 128(a)(4) of the
2 Truth in Lending Act (U.S.C. 1638(a)(4)) is amend-
3 ed—

4 (A) by striking “or” after “does not exceed
5 \$5,” and

6 (B) by inserting “, or if the loan is subject
7 to section 129B”.

8 (2) EFFECT ON OTHER LAWS.—Section 111 of
9 the Truth in Lending Act (U.S.C. 1610) is amend-
10 ed—

11 (A) in subsection (b), by inserting “sub-
12 section (f) of this section and” after “Except as
13 provided in”; and

14 (B) by adding at the end the following new
15 subsection:

16 “(f) PAYDAY LOANS.—

17 “(1) IN GENERAL.—The following provisions of
18 the law of any State shall not apply to any payday
19 loan, or any refinancing of a payday loan, that is
20 subject to section 129B:

21 “(A) Any provision requiring minimum
22 loan terms.

23 “(B) Any provision prohibiting, defining or
24 limiting any refinancing.

1 “(C) Any provision prohibiting or limiting
2 the use of a check or debit authorization to
3 originate a payday loan.

4 “(D) Any provision prohibiting or man-
5 dating extended payment plans.

6 “(E) Any provision limiting the rate or
7 amount of interest and fees or default, delin-
8 quency or not sufficient fund fees or other
9 charges which may be taken, received or re-
10 served by creditors for payday loans or any refi-
11 nancing of a payday loan.

12 “(2) ENFORCEMENT.—Notwithstanding para-
13 graph (1), any State may employ or establish State
14 laws for the purpose of enforcing the requirements
15 of section 129B.”.

16 (c) CLERICAL AMENDMENT.—The table of sections
17 for chapter 2 of the Truth in Lending Act is amended
18 by inserting after the item relating to section 129 the fol-
19 lowing new items:

“129A. Fiduciary duty of servicers of pooled residential mortgages.
“129B. Protections for consumers.”.

○